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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,195	03/06/2001	Suk H. Cho	09143-017001	3370

26191 7590 01/26/2004

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EXAMINER	
EVANS, CHARESSE L	

ART UNIT	PAPER NUMBER
1615	20

DATE MAILED: 01/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/800,195	CHO ET AL.	
	Examiner	Art Unit	
	Charesse L. Evans	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) *31 and 32* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30 and 33-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

PLEASE NOTE THE EXAMINER'S AND SPE'S CONTACT INFORMATION WILL CHANGE AFTER FEBRUARY 3, 2004. SEE NEW NUMBERS AT END OF ACTION

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Action Summary

Acknowledgement is made of the receipt of applicant's Petition for Extension of time and Notice of Appeal, filed July 7, 2003.

Acknowledgement is made of the receipt of applicant's Request for Continued Examination, Amendment and Response and Declaration, filed September 8, 2003.

Acknowledgement is made of the receipt of Petition to Revive, filed November 11, 2003. The Decision Granting Petition under 37 CFR 1.137(b) is granted, mailed December 22, 2003.

Claims 31-32 are cancelled and claims 1-30 and 32-34 are pending in this Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-19 and 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaynor et al (US 5,904,924). The claims are directed to a dietary supplement comprising a grape skin extract and a grape seed extract.

Gaynor discloses a nutritional powder comprised of a grape seed extract and a grape skin extract. The grape seed extract is standardized to 95% polyphenols (column 4, Table). While the reference does not expressly teach applicant's claimed ratios, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. Where the general conditions of a claim are disclosed in the prior art, it is not

inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955).

The cited reference does not expressly teach the use of the Muscat variety grape seed extract. However, it is the position of the examiner that this is a limitation that would be routinely determined by one of ordinary skill in the art, through minimal experimentation, as being suitable, absent the presentation of some unusual and/ or unexpected results. Absent a clear showing of criticality, the determination of the particular grape seed extract variety is within the skill of the ordinary worker as part of the process of normal optimization.

The food supplement of the referenced invention further contains blue-green algae, which is a source of quercitin, Japanese Green Tea, standardized to 7.5% catechins predominantly as epigallocatechin gallate, bilberry, standardized to 25% anthocyanocides and ginkgo biloba, standardized to 24% gingkoflavoglycosides (column 4).

One of ordinary skill in the art at the time of the invention would have been motivated to modify the teachings of Gaynor with the expectation that the components of the referenced composition have been conventionally employed for their known functions or nutritional benefit, such as antioxidant and anti-tumor activity.

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkes (WO 99/07400).

The disclosed invention provides a dietary supplement comprising an enzyme that is effective for inhibiting in vivo platelet activity and LDL cholesterol oxidation in a mammal at a dosage of about 30 mg/kg or less. The supplement may contain grape seed extracts, grape skin extracts, bilberry extracts, gingko biloba extracts or quercetin. The supplement may also contain fungal proteases, acid stable proteases and bromelain (Abstract).

The cited reference does not expressly teach the use of the Muscat variety grape seed extract. However, it is the position of the examiner that this is a limitation that would be routinely determined by one of ordinary skill in the art, through minimal experimentation, as being suitable, absent the presentation of some unusual and/ or unexpected results. Absent a clear showing of criticality, the determination of the particular grape seed extract variety is within the skill of the ordinary worker as part of the process of normal optimization.

One of ordinary skill in the art at the time of the invention would have been motivated to modify the teachings of Perkes with the expectation that the components of the referenced composition have been conventionally employed for their known functions or nutritional benefit, such as antioxidant and anti-tumor activity.

Conclusion

No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charesse L. Evans whose telephone number is 703-308-6400 (or 571-272-0593) The examiner can normally be reached on Monday - Thursday 7:00a - 4:30p; Alternating Fridays 7:00a - 3:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927 (571-272-0602). The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Charesse L. Evans
Examiner
Art Unit: 1615

January 14, 2004

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600